

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRIAN GALBRAITH,)	
)	C.A. NO.:
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
CHRISTIANA CARE HEALTH)	
SERVICES, INC.)	
)	
Defendants.)	

COMPLAINT

Jurisdiction

1. This action arises under The Americans with Disability Act of 1990, as amended, 42 U.S.C. §12102 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) et. seq. ("Title VII") and 42 U.S.C. §1981, 1981(a) ("1981, 1981(a)") and the common law of the State of Delaware.

2. Jurisdiction of this Court is invoked pursuant to The Americans with Disability Act of 1990, as amended, 42 U.S.C. §12102 and Title VII, §1981 and 1981(a), 28 U.S.C. §1331, 1337, 1343, 2201, 2202 and 29 U.S.C. §216(b) and 626. This Court's jurisdiction over the state law claims is invoked pursuant to 28 U.S.C. §1331 and the Doctrine of Supplemental Jurisdiction pursuant to 28 U.S.C. §1367. The Equal Employment Opportunity Commission issued a right to sue letter to Mr. Galbraith on April 12, 2007, a copy of which is attached as "Exhibit A".

3. Declaratory, injunctive and equitable relief is sought pursuant to 28 U.S.C. §§2201, 2202, 29 U.S.C. §§216(b), 626(b) and the Americans with Disability Act of 1990, as amended, 42 U.S.C. §12102 and Title VII and 1981 and 1981(a).

4. Liquidated damages are sought pursuant to 29 U.S.C. §626(b).

5. Costs and attorneys fees are sought pursuant to 29 U.S.C. §216, The Americans with Disability Act of 1990, as amended, 42 U.S.C. §12102 and Title VII, 1981, 1981(a) and Federal Civil Procedure 54.

Venue

6. This action properly lies in the District Court of the District of Delaware pursuant to 28 U.S.C. §1391(b) because claims arose in this judicial district, the defendant conducts business within the judicial district and the unlawful employment practice was committed in this judicial district.

Parties

7. Brian Galbraith, plaintiff, is Delaware resident residing at 3604 Mill Creek Road, Wilmington, Delaware 19808.

8. Christiana Care, Inc. is a Delaware Corporation, with a business address of 4755 Ogletown-Stanton Road, Newark, Delaware 19718-6001.

9. Plaintiff was employed by Defendant as a Registered nurse from June 29, 1998 to November 1, 2000. During that employment he reported an on the job injury on February 10, 2000. Plaintiff was terminated from his employment with Defendant on November 1, 2000.

10. After leaving Defendant's employment Plaintiff worked as a Crisis Counselor in a Psychiatric facility from 2001 to 2003 and the as Director of Utilization Review for the same facility from 2003 to 2004

11. On or about August 17, 2004 Plaintiff applied for a position with Defendant. On October 5, 2004 , by letter Defendant offered plaintiff a position as a Registered Nurse in the 4C-Neurosurgical Floor. The start date of that position was October 25, 2004.

12. Christina Collins, at all times relevant to this litigation was an employee and/or agent

of Christiana Care. Defendant, Christiana Care is bound by the actions of Ms. Collins under the Doctrine of Respondent Superior.

13. On Friday, October 22, 2004, after plaintiff had completed a pre-employment physical, after plaintiff had completed orientation and after completion of all pre-employment paperwork, Christine Collins, the Director of Employee Health Services for the Defendant called Plaintiff directly to rescind the employment offer based on her determination that Plaintiff was not capable of performing the essential functions of the job.

14. Ms. Collins, was familiar with Plaintiff's prior medical history from his prior employment and made the determination, without a reasonable basis to do so, that Plaintiff was not capable of performing the essential functions of the job.

15. There was no evidence to show that at the time he was offered employment, Plaintiff had a lifting restriction and therefore, Defendant, had no basis in which to rescind the offer of employment.

COUNT I

16. Paragraphs 1 through 15 are incorporated herein by reference.

17. Christiana Care, Inc. by, through Christine Collins discriminated against Mr. Galbraith based on a perceived disability by its adverse employment action in violation of the Americans with Disabilities Act of 1990, as amended and Title VII and 1981 and 1981a.

18. As a direct and proximate result of the discriminatory actions taken by defendants, Mr. Galbraith has suffered, is presently suffering and will continue to suffer lost income and benefits, lost future wages, loss of professional stature, emotional pain and suffering, humiliation, inconvenience, mental anguish, loss of enjoyment of life and other pecuniary and non-pecuniary losses.

COUNT II

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

19. Paragraphs 1 through 18 are incorporated herein by reference.

20. Defendant's illegal withdraw of employment of Mr. Galbraith was a breach of the public policy of the State of Delaware and was therefore, a breach of the covenant of good faith and fair dealing implied in his employment contract.

21. As a direct and proximate result of the breach of the covenant of good faith and fair dealing implied in its contract with Mr. Galbraith by defendants, Mr. Galbraith has suffered, is presently suffering and will continue to suffer lost income and benefits, lost future wages, loss of professional stature, emotional pain and suffering, humiliation, inconvenience, mental anguish, loss of enjoyment of life and other pecuniary and non-pecuniary losses.

22. Defendants wrongful misconduct was malicious, reckless, willful and wanton. Defendants are therefore liable to Mr. Galbraith for punitive damages

COUNT III

PUNITIVE DAMAGES

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. The actions of defendant, through its agent and employee, Christine Collins, were based on malice, recklessness and willful and wanton.

25. Ms. Collins testified in opposition to plaintiff's claim for worker compensation benefits arising from his 1990 on the job injury. Despite her testimony, plaintiff was awarded benefits. Ms. Collins' subsequent actions against plaintiff were in retribution for his prior claim.

WHEREFORE, Brian Galbraith respectfully requests that this Honorable Court grant him the following relief against defendants:

- a. A judgement declaring that defendants conduct was in violation of law and Mr. Galbraith's rights;
- b. A permanent injunction enjoining Defendants from engaging in such conduct in the future;
- c. An order requiring Defendants to pay Mr. Galbraith the salary and benefits which he would have received had he not been illegally discharged;
- d. An award of compensatory damages for Mr. Galbraith's lost income and benefits, lost future wages, loss of professional stature, emotional pain and suffering, humiliation, inconvenience, mental anguish, loss of enjoyment of life and other pecuniary and non-pecuniary losses;
- e. An award of liquidated damages;
- f. An award of punitive damages;
- g. An award of attorney's fees, costs and expenses of litigation and pre- and post-judgement interest; and
- h. Such other relief as this Court deems just and proper.



R. STOKES NOLTE, ESQUIRE

Del Bar ID No. 2301

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Wilmington, DE 19806

(302) 777-1700

Attorney for Plaintiff Brian Galbraith

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <u>Brian Galbraith</u> (b) County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <u>Noite Associates</u> <u>1010 N. Bancroft Pkwy Suite 21</u> <u>Wilmington, DE 19805</u>	DEFENDANTS <u>Christiana Care Health Services, Inc</u> County of Residence of First Listed Defendant <u>New Castle</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment						
VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 USC 2000 42 USC 1981 Americans with Disability Act of 1990, 42 USC 12102, Title VII of the Civil Rights Act of 1964</u> Brief description of cause: <u>Wrongful termination based on ADA, Race and Gender</u>						
VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No						

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE

SIGNATURE OF ATTORNEY OF RECORD

5/25/07

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07-637

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

5-25-07

(Date forms issued)

[Signature]
(Signature of Party or their Representative)

J. Stowell
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action